

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In re:)	
)	MB Docket: _____
Chesapeake Television Licensee, LLC)	CSR No. _____
)	
Petition for Special Relief for Waiver of)	
Section 76.92(f) & 76.106(a) of the)	
Commission's Rules)	

To: The Secretary
 Chief, Media Bureau

PETITION FOR SPECIAL RELIEF

Chesapeake Television Licensee, LLC ("Chesapeake LLC"), licensee of television station WBFF(TV), Baltimore, Maryland, hereby requests, pursuant to Section 76.7 of the Commission's rules, waiver of the significantly viewed exception to the network nonduplication rules (Section 76.92(f)) and the syndicated exclusivity rules (Section 76.106(a)) for WBFF(TV). Pursuant to this exception, cable systems are permitted to carry the entire signal of distant television station WTTG(TV), Washington, DC, in the unquestionably Baltimore-centric communities of Glen Burnie, Bel Air, Ellicott City, and Columbia all of which are located in the Baltimore, Maryland Nielsen Designated Market Area ("Baltimore DMA"). As those of us who live and work in the area know, the communities are integral parts of the Baltimore DMA.

Chesapeake LLC seeks this waiver so that station WBFF(TV) can enforce its rights to network program nonduplication and syndicated exclusivity protection against WTTG(TV). As explained more fully below, although Washington, DC television station WTTG(TV) is included as part of the Commission's now more than forty-year old 1972 list of television stations that are "significantly viewed" in Anne Arundel, Harford and Howard, Maryland counties,¹ WTTG(TV),

¹ See 1972 Reconsideration Order, 36 FCC 2d 326, Appendix B (1972).

in fact, no longer attains the viewing levels required for such status in the Maryland communities of Columbia, Ellicott City, Glen Burnie, and Bel Air. Consequently, Chesapeake LLC respectfully requests that the Commission waive the “significantly viewed” exception with respect to WTTG(TV) in those communities.

WBFF(TV) is an affiliate of the Fox Network and is licensed to Baltimore DMA, while WTTG(TV) operates in the DC DMA. Pursuant to its network affiliation agreement with Fox, WBFF(TV) acquired network nonduplication rights from Fox for the entire Baltimore DMA, to the extent permitted by the FCC’s rules. WBFF(TV) has also acquired the exclusive rights to certain syndicated programming in the Baltimore market. Nevertheless, WBFF(TV) cannot fully exercise its network nonduplication and syndicated exclusivity rights against WTTG(TV) because WTTG(TV) is included on the Commission’s 1972 list as being significantly viewed. As a result of the significantly viewed exception, cable systems in the aforementioned counties, are currently not required to delete the duplicating programming of WTTG(TV).

Pursuant to the Commission’s Rules and case precedent, in order to obtain a waiver of the significantly viewed exception, a petitioner must demonstrate, “utilizing community- or system-specific data, to one standard error . . . that the station in question has not met [the Commission’s] standards for significant viewing for two consecutive years.”² For a Fox-affiliated station such as WTTG(TV) to be significantly viewed, it must achieve in non-cable homes both a share of viewing hours of at least 2% (total week hours) and a net weekly circulation of at least 5%, calculated to one standard error.³ WTTG(TV) fails to meet these requirements in the four Baltimore DMA communities. A special community-specific survey conducted by Nielsen Media Research, attached hereto as Exhibit 1, which includes a special

² *KCST-TV, Inc.*, 103 FCC 2d 407, 413 (1986).

³ See 47 C.F.R. §76.5(i).

tabulation of over-the-air viewing using diaries from noncable/non-ADS homes for the specified ZIP codes of Glen Burnie, Bel Air, Ellicott City, and Columbia Maryland.⁴ Chesapeake LLC previously gave notice of the special tabulation as required by 47 C.F.R. §76.54.⁵

The first year's survey audience estimates for all of communities at issue are based on February 2007 and July 2007 data, combined, and the second year's estimates are based on February 2008 and July 2008 data, combined.⁶ As the studies show, WTTG-TV fails to meet the FCC's benchmarks for significantly viewed status by a wide margin because the share of viewing in non-cable homes falls below 3%, within one standard error, and the net weekly circulation falls far below 25%, within one standard error, for each of the communities.⁷ Indeed, the studies show that for all communities and in all survey periods, **WTTG-TV's share of total viewing hours and its net weekly circulation share are at zero.**⁸

Based on the data presented in this petition, Chesapeake LLC requests that the Bureau find that station WTTG-TV no longer has viewing levels necessary to demonstrate significantly viewed status in the Baltimore, Maryland communities of Glen Burnie, Bel Air, Ellicott City, and Columbia.

⁴ The specified ZIP codes are: Glen Burnie, 21060 and 21061; Bel Air, 21014 and 21015; Ellicott City, 21042 and 21043; and Columbia, 21044, 21045, 21046.

⁵ On August 31, 2012, Fox responded to the Chesapeake LLC notice letter and objected to the procedures outlined in the Chesapeake LLC notice letter. Chesapeake LLC believes that the Fox objections are entirely without merit as the procedures are entirely consistent with longstanding Commission precedent.

⁶ See Exhibit 1.

⁷ Because Chesapeake LLC is submitting community specific data, rather than county or system-specific data, there is no requirement that the data provided be proportional. See, e.g., *WGFL License Corporation*, 22 FCC Rcd 1708 (2007); *WNTH Broadcasting, Inc.*, 16 FCC Rcd 16377 (2001); *KCST-TV, Inc.*, 103 FCC 2d 407 (1986).

⁸ As the United States Court of Appeals for the District of Columbia Circuit held long ago, "if a station's viewership falls to nearly zero ... it is obviously illogical for the Commission to deem the station significantly viewed." *KCST-TV, Inc. v. FCC*, 699 F.2d 1185, 1193 n.13 (D.C. Cir. 1983). As noted, here Nielsen's surveys established that WTTG-TV's viewing shares are not only *nearly* zero percent, they are, in fact, *at zero* percent.

Conclusion

Based on the foregoing, Chesapeake LLC respectfully requests that the Commission waive the significantly viewed exception to the network nonduplication and syndicated exclusivity rules for District of Columbia station WTTG(TV) so that it may assert its exclusivity rights in the distant Baltimore communities of Glen Burnie, Bel Air, Ellicott City, and Columbia for Baltimore station WBFF(TV).

Respectfully submitted,

By: 
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Paul A. Cicelski
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Dated: July 3, 2013

Exhibit 1



Issued to client on 10/12/12

The attached report provides audience net weekly circulation (cume) and share information among non-cable/non-ADS households for WTTG during the Nielsen Station Index (NSI) survey conducted over four week periods during the February 2007, July 2007, February 2008, & July 2008 measurement periods. The report is based on a series of zip codes. Households will maintain the reported Nielsen Viewers in Profile (VIP) weights used to project in-tab sample households to universe estimates for their respective measurement periods. This study measures non-cable/non-ADS household viewing between 7AM-1AM, Monday to Sunday.

The sample source for this survey consisted of non-cable/non-ADS TV households returning usable television viewing diaries. NSI procedures were used for distributing diaries and for compiling the estimated audience projections in this report. Average quarter hour projections were computed by summing weights for quarter hours in the daypart for the non-cable/non-ADS in-tab households and dividing by the number of quarter hours in the daypart. The weights which were used for projections are those used to project in-tab sample households to universe estimates in the regular Nielsen Viewers in Profile analysis. Share and cume estimates as well as their respective standard errors are computed for each of the geographies as follows:

Shares of total viewing are computed by dividing average quarter hour M-Su 7AM-1AM projections of a given station for the non-cable/non-ADS in-tab households by the average quarter hour M-Su 7AM-1AM projections in non-cable/non-ADS households across all stations. The associated standard error is calculated using the accepted formula for computing the standard error of a ratio estimate and is shown below:

The average weekly circulation (cume) is an average of the four weeks of the measurement period. The cume was computed by summing the weights for all non-cable/non-ADS households tuning at least one quarter hour to a given station within the cycle during the M-Su 7AM-1AM daypart and dividing by the sum of all non-cable/non-ADS weights within the given measurement period for each week. The cume for each week in the measurement period is then summed and divided by the number of weeks in the measurement period to compute the average weekly cume. The associated standard error for the average weekly cume is calculated using the accepted formula for computing the standard error of a ratio estimate. This standard error is the error of the average weekly cume; it is not an average of the weekly standard error. The formulas used are shown below:

Share

$$Share = \frac{\sum_{s=1}^n (w * Qhrs(s))}{\sum_{t=1}^n (w * Qhrs(t))}$$



Share Standard Error

$$\text{Std Error} = \sqrt{\frac{n}{n-1} * \sum_1^n \left[\frac{(w * Qhrs(s)) - (Share * w * Qhrs(t))}{\sum_1^n (w * Qhrs(t))} \right]^2}$$

where n = number of intab households

where w = household weight

where $Qhrs(s)$ = total quarter hours tuned to station of interest by household

where $Qhrs(t)$ = total quarter hours tuned by household

Average Weekly Cume

$$\text{Average Weekly Cume} = \frac{1}{z} * \sum_1^z \left[\frac{\sum_1^n (HH \text{ Weight} * x)}{\sum_1^n HH \text{ Weight}} \right]$$

Average Weekly Cume Standard Error

$$\text{Std Error} = \sqrt{\frac{1}{z^2} \sum_1^z \left[\frac{n}{n-1} * \sum_1^n \left[\frac{(x - \text{Week Cume}) * HH \text{ Weight}}{\sum_1^n HH \text{ Weight}} \right]^2 \right]}$$

where z = number of weeks in analysis (with non-zero intabs)

where n = number of intab households in week

where $x = 0$ if household did not tune station of interest

where $x = 1$ if household did tune station of interest

The attached report is representative of the viewing patterns of the non-cable/non-ADS households of the geographic area surveyed.



Significant Viewing Study
 Baltimore DMA
 Feb07, Jul07, Feb08, Jul08
 Su-Sa 7A-1A
 WTTG

Geography Grouping	Results	Feb07/Jul07	Feb08/Jul08
Ellicott City 21042, 21043	Number of Intabs	12	7
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	-	-
Columbia 21044, 21045, 21045	Number of Intabs	3	3
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	-	0.00
Glen Burnie 21060, 21061	Number of Intabs	6	5
	Average Weekly Cume	0.00	0.00
	Cume Std. Error	0.00	0.00
	Share	0.00	0.00
	Share Std. Error	0.00	0.00
Bel Air 21014, 21015	Number of Intabs	1	3
	Average Weekly Cume	-	0.00
	Cume Std. Error	-	0.00
	Share	-	0.00
	Share Std. Error	-	0.00

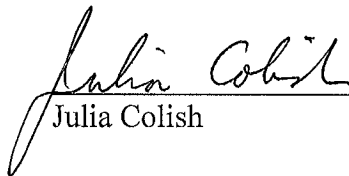
CERTIFICATE OF SERVICE

I, Julia Colish, a secretary with the law firm of Pillsbury Winthrop Shaw Pittman LLP, hereby certify that copies of the foregoing **"PETITION FOR SPECIAL RELIEF"** were served via U.S. Mail on this 3rd day of July 2013 to the following:

RCN Corporation President Plaza, Bldg. 1 196 Van Buren St., Ste. 300 Herndon, VA 20170	Armstrong Cable Services One Armstrong Place Butler, PA 16001
Atlantic Broadband 330 Drummer Drive Grasonville, MD 21638	Easton Cable Attn: William D. Russell Cable & Communications Dept. Manager 201 N. Washington St. Easton, MD 21601
Regional Office for Maryland 406 Headquarters Dr., Suite 201 Millersville, MD 21108	Broadstripe 13455 Noel Road, Suite 1310 Dallas, TX 75240
MetroCast Communications 233 Colonial Ave Colonial Beach, VA 22443	MetroCast Communications 43920 Airport View Drive Hollywood, MD 20636
Verizon 1320 North Courthouse Road 9 th Floor Arlington, VA 22201	MetroCast Communications 11387 Ridge Road King George, VA 22485-4048
Citizens Telephone Coop. 201 East Main Street, Suite 5 Floyd, VA 24091-0159	Cox Communications 1400 Lake Hearn Drive Atlanta, GA 30319
Department of Technology and Communication Services 3450 Court House Drive Ellicott City, MD 21043	Howard County Executive 3420 Courthouse Drive Ellicott City, MD 21043
Mayor's Office Government of the City of Annapolis 160 Duke of Gloucester Annapolis, MD 21401	John R. Leopold County Executive The Arundel Center 44 Calvert St. Annapolis, MD 21404-1831

WJLA-TV ACC Licensee, LLC C/O WCIV 888 Allbritton Boulevard Mount Pleasant, SC 29464	Bel Air Town Administrator 39 N. Hickory Avenue Bel Air, MD 21014
WFDC-DT Telefutura D.C. LLC 5999 Center Drive, Suite 4083 Los Angeles, CA 90045	WUSA Detroit Free Press, Inc. c/o Gannett Co., Inc. 7950 Jones Branch Dr. McLean, VA 22107
WZDC-CA ONDA Capital, Inc. 2000 North 14 th Street, Suite 400 Arlington, VA 22201	WNVC Commonwealth Public Broadcasting Corporation 8101A Lee Highway Falls Church, VA 22042
WFPT Maryland Public Broadcasting Commission 11767 Owings Mills Boulevard Owings Mills, MD 21117	WETA-TV Greater Washington Educational Telecommunications Assn. 2775 South Quincy Street Arlington, VA 22206
WHUT-TV Howard University 2222 4 th Street, N.W. Washington, DC 20059	WNVTV Commonwealth Public Broadcasting Corporation 8101A Lee Highway Falls Church, VA 22042
WDCA FOX Television Stations, Inc. c/o Dianne Smith 5151 Wisconsin Ave., NW Washington, DC 20016	WPXW-TV ION Media Washington License, Inc. 601 Clearwater Park Road West Palm Beach, FL 33401
WMDO-CA Entravision Holdings, LLC 2425 Olympic Blvd., Suite 6000 W Santa Monica, CA 90404 - 4030	WTTG FOX Television Stations, Inc. 5151 Wisconsin Ave., N.W. Washington, DC 20016
WDCW WDCW Broadcasting, Inc., Debtor-In-Possession 2121 Wisconsin Avenue, Suite 350 Washington, DC 20005	WRC-TV NBC Telemundo License Co. 1299 Pennsylvania Avenue, NW 9th Floor Washington, DC 20004

WJZ-TV CBS Corporation 1800 K Street, N.W., Suite 920 Washington, DC 20006	WBAL-TV 11 3800 Hooper Ave. Baltimore, MD 21211
WMPB Maryland Public Broadcasting Commission 11767 Owings Mills Boulevard Owings Mills, MD 21117	WMJF-LP Towson University c/o WMJF, Department of Electronic Media & Film Towson, MD 21252 - 0001
WNUV Baltimore (WNUV-TV) Licensee, Inc. 2000 West 41st Street Baltimore, MD 21211	WMAR-TV Scripps Media, Inc. 312 Walnut Street, 28th Floor Cincinnati, OH 45202 - 4067
WMPT Maryland Public Broadcasting Commission 11767 Owings Mills Boulevard Owings Mills, MD 21117	WUTB Fox Television Stations, Inc. 444 N. Capitol ST, NW, Suite 740 c/o Dianne Smith Washington, DC 20001
FOX Television Stations, Inc. Attn: Joseph M. Di Scipio 444 North Capitol Street, NW Suite 740 Washington, D.C. 20001	



Julia Colish

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2300 N Street,

Billing Address: NW**Billing Address 2:****City:** Washington**State / Province:** DC**Zip / Postal Code:** 20037-1122**Country:** USA**Account Information****Card Type:** American Express**Card Number:** *****REDACTED**Payment Information****Payment Amount:** \$1,355.00**Transaction Date** 07/03/2013 16:39
and Time: EDT